

# Metropolitan Transportation Commission Programming and Allocations Committee

November 8, 2006

Item Number 3a

## Resolution No. 3789

---

- Subject:** Approval of Cooperative Agreement with Caltrans for the I-80 High Occupancy Vehicle (HOV) Lane Extension from State Route 4 to the Carquinez Bridge.
- Background:** The I-80 Eastbound HOV Lane Extension project is sponsored and implemented by Caltrans, as directed by Regional Measure 2. Caltrans submitted an Initial Project Report (IPR) to MTC for approval, and MTC gave Caltrans an initial allocation of \$5.3 million for design and right-of-way costs in January 2006. Caltrans requires entering into a cooperative agreement in order to receive funds for project costs. However, Caltrans has certain practices and requirements that conflict with Regional Measure 2 Policies and Procedures. This resolution approves the Cooperative Agreement and waives certain provisions of the RM 2 Policies and Procedures as established in MTC Resolution 3636, for Caltrans for this project.
- Issues:** There are two main RM 2 policies that need to be waived for Caltrans to administer this project in a manner similar to how Regional Measure 1 bridge construction projects have been implemented by Caltrans.
- RM2 Policies and Procedures state that all eligible costs shall be invoiced on a reimbursable basis. Caltrans requires advance payments for Caltrans administered projects using local funding. The cooperative agreement waives the reimbursement requirement and allows for advance payment followed by detailed expenditure reports at the end of each month, as set forth in section I.C of the agreement.
  - The RM2 Policies and Procedures establish a 50 percent overhead limit. Section III.D of the agreement would waive the 50 percent overhead limit, and set the overhead rate at the actual overhead rate set each fiscal year pursuant to standard State of California accounting practices.
- Recommendation:** Refer Resolution No. 3789 to the Commission for approval.
- Attachments:** MTC Resolution No. 3789 and Attachment A (Cooperative Agreement)

Date: November 15, 2006  
W.I.: 1255  
Referred by: PAC

ABSTRACT

MTC Resolution No. 3789

This resolution approves the Cooperative Agreement with Caltrans for the I-80 HOV Lane Extension from State Route 4 to the Carquinez Bridge, using Regional Measure 2 funds.

This resolution includes the following attachments:

Attachment A - Cooperative Agreement

Additional discussion of this allocation is contained in the Deputy Executive Director's memorandum to the MTC Programming and Allocations Committee dated November 8, 2006.

Date: November 15, 2006  
W.I.: 1255  
Referred by: PAC

Re: Approval of Cooperative Agreement with Caltrans for the I-80 HOV Lane Extension from Route 4 to Carquinez Bridge using Regional Measure 2 funds

METROPOLITAN TRANSPORTATION COMMISSION  
RESOLUTION No. 3789

WHEREAS, pursuant to Government Code Section 66500 *et seq.*, the Metropolitan Transportation Commission (“MTC”) is the regional transportation planning agency for the San Francisco Bay Area; and

WHEREAS, Streets and Highways Code Sections 30950 *et seq.* created the Bay Area Toll Authority (“BATA”) which is a public instrumentality governed by the same board as that governing MTC; and

WHEREAS, on March 2, 2004, voters approved Regional Measure 2, increasing the toll for all vehicles on the seven state-owned toll bridges in the San Francisco Bay Area by \$1.00, with this extra dollar funding various transportation projects within the region that have been determined to reduce congestion or to make improvements to travel in the toll bridge corridors, as identified in SB 916 (Chapter 715, Statutes of 2004), commonly referred as Regional Measure 2 (“RM2”); and

WHEREAS, RM2 establishes the Regional Traffic Relief Plan and lists specific capital projects and programs and transit operating assistance eligible to receive RM2 funding as identified in Streets and Highways Code Sections 30914(c) & (d); and

WHEREAS, The I-80 High Occupancy Vehicle (HOV) Lane Extension from State Route 4 to the Carquinez Bridge is identified as capital project number 8 under RM 2 and is eligible to receive RM 2 funding as identified in Streets and Highways Code Sections 30914(c); and

WHEREAS, RM2 assigns administrative duties and responsibilities for the implementation of the Regional Traffic Relief Plan to MTC; and

WHEREAS, BATA shall fund the projects of the Regional Traffic Relief Plan by transferring RM2 authorized funds to MTC; and

WHEREAS, MTC adopted policies and procedures for the implementation of the Regional Measure 2 Regional Traffic Relief Plan, which specifies the allocation criteria and project compliance requirements for RM 2 funding (MTC Resolution No. 3636); and

WHEREAS, Caltrans must abide by state procedures that may be inconsistent with RM 2 Policies and Procedures as set forth in MTC Resolution 3636; and

WHEREAS, MTC Resolution No. 3636 requires that eligible costs be invoiced on a reimbursable basis, and

WHEREAS, the state requires advance payments for Caltrans administered projects using local funding; and

WHEREAS, MTC Resolution No. 3636 establishes a 50 percent overhead limit; and

WHEREAS, the state sets the overhead rate each year pursuant to standard State of California accounting practices, now, therefore, be it

RESOLVED, that the reimbursement requirement established by MTC Resolution 3636 is waived and advance payment followed by detailed expenditure reports at the end of each month is allowed as set forth in section I.C. of Attachment A to this resolution; and, be it further

RESOLVED, that the overhead rate cap of 50 percent specified in MTC Resolution No. 3636 is waived, and the overhead cap shall be the state's overhead rate as set each fiscal year pursuant to standard State of California accounting practices as set forth in section III.D. of Attachment A to this resolution and, be it further

RESOLVED, that MTC approves the Cooperative Agreement with Caltrans for the I-80 HOV Lane Extension from Route 4 to Carquinez Bridge as set forth in Attachment A to this resolution; and, be it further

RESOLVED, that the Executive Director is authorized to execute Attachment A on behalf of MTC, and to make non-substantive changes or minor amendments as deemed appropriate subject to review by MTC's Office of General Counsel for form.

METROPOLITAN TRANSPORTATION COMMISSION

---

Jon Rubin, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at the regular meeting of the Commission held in Oakland, California, on November 15, 2006.

Date: November 15, 2006  
W.I.: 1255  
Referred by: PAC

Attachment A  
MTC Resolution No. 3789

**Cooperative Agreement with Caltrans  
for the I-80 High Occupancy Vehicle (HOV) Lane Extension  
from State Route 4 to the Carquinez Bridge**

## COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT, ENTERED INTO EFFECTIVE ON NOVEMBER 1, 2006, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE," and the METROPOLITAN TRANSPORTATION COMMISSION, referred to herein as "MTC."

### RECITALS

- A. Whereas, on March 2, 2004, voters approved Regional Measure 2 ("RM2"), increasing the toll for all vehicles on the seven state-owned toll bridges in the San Francisco Bay Area by \$1.00 to fund various transportation projects within the region that have been determined to reduce congestion or to improve travel in the toll bridge corridors; and
- B. Whereas, RM2 established the Regional Traffic Relief Plan and listed specific capital projects and programs and transit operating assistance as eligible to receive RM2 funding as identified in California Streets and Highways Code ("SHC") section 30914(c) and (d); and
- C. Whereas, pursuant to MTC Resolution No. 3636, MTC established procedures whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 funding; and
- D. Whereas, STATE has submitted an allocation request for RM2 funding for the construction of a High-Occupancy Vehicle (HOV) lane in the eastbound direction on Interstate 80 from State Route 4 to the Carquinez Bridge. (the "PROJECT") which is identified in SHC section 30914(c)(8) as eligible for consideration in the Regional Traffic Relief Plan. A copy of that allocation request is attached hereto and is incorporated herein as Attachment A, Allocation Request; and
- E. Whereas, by MTC Resolution No. 3730, MTC approved the allocation and PROJECT reimbursement using RM2 funds.

NOW, THEREFORE, the parties hereby agree as follows:

### I. STATE AGREES

A. STATE agrees to award a contract to perform the PROJECT activities described in STATE's updated Initial Project Report, a copy of which is attached hereto and is incorporated herein as Attachment B, Updated Initial Project Report. STATE will provide all reasonably necessary staffing and support resources to complete the PROJECT as described in Attachment B.

B. STATE shall provide MTC with semi-annual progress reports on or before each January 31 (for the period covering July 1 through December 31 of the prior year), and July 31 (for the period covering January 1 through June 30) throughout the term of this Agreement in accordance with the monitoring and reporting requirements specified in MTC Resolution No. 3636, a copy of which is attached hereto and incorporated herein as Attachment C, MTC Resolution No. 3636.

C. STATE shall invoice MTC monthly in advance for all estimated STATE costs anticipated to be incurred by STATE in the performance of this Agreement, the first of which shall not exceed three hundred thousand dollars (\$300,000). STATE shall invoice MTC on a regular basis each month according to STATE's published electronic fund transfer (EFT) invoice schedule. STATE shall submit, within thirty (30) days after submission of each monthly estimate invoice, a detailed expenditure report for the actual charges incurred compared to the prior estimate of costs contained therein. Expenditure reports shall show all expenditures measured against the applicable Expenditure Authorization. Each monthly invoice subsequent to the first invoice tendered in a fiscal year will be adjusted to reflect actual costs expended over the previous month and any reallocation or additional costs anticipated over the succeeding month. No invoice, when considered in conjunction with previously submitted invoices, shall cumulatively request payment in excess of the ceiling amounts authorized per phase and for the entire PROJECT as established in MTC Resolution No. 3730, as may be amended from time to time

D. STATE is responsible for completing the PROJECT within cost, scope and schedule as described in Attachment B. If the maximum amount provided by this Agreement as specified in Section II, Paragraph A is insufficient to fully fund PROJECT, STATE, after consultation with MTC, shall identify and secure other funding to fully fund the PROJECT or will reduce the scope of the PROJECT.

E. STATE shall comply with standard STATE policies and procedures (P&P) relative to constructing, operating, and maintaining the PROJECT and the provisions of MTC's RM2 Policy Guidance contained in Attachment C to the extent that Guidance does not conflict with the express terms of this Agreement.

F. STATE certifies that:

- PROJECT is consistent with the Regional Transportation Plan ("RTP").
- The Year of PROJECT funding for design, right of way and/or construction phases has taken into consideration the time necessary to obtain environmental clearance and permitting approval for PROJECT as an operable and useable State Highway segment.



- The RM2 phase or segment is fully funded and will result in an operable and useable State Highway segment.
- STATE has reviewed the PROJECT needs and has adequate internal staffing and support resources to deliver and complete the PROJECT within the cost, scope and schedule set forth in the Updated Initial Project Report, attached to this Agreement as Attachment B.
- That STATE is an eligible sponsor of projects in the RM2 Regional Traffic Relief Plan, Capital Program and is authorized to submit an application for RM2 Funds for PROJECT in accordance with SHC section 30914(c).
- The PROJECT, for which RM2 funds is requested, is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code section 21000 *et seq.*), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations section 15000 *et seq.*), and, if relevant, the National Environmental Policy Act (NEPA) 42 USC 4-1 *et seq.* and the applicable regulations thereunder.
- There is no legal impediment to STATE making allocation requests for RM2 funds.
- There is no pending or threatened litigation which might in any way adversely affect the PROJECT or the ability of STATE to deliver such PROJECT.

G. STATE shall indemnify and hold harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of STATE, its officers, employees, or contractors or subcontractors or any of them in connection with STATE's performance of PROJECT under this allocation of RM2 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM2 funds as shall reasonably be considered necessary by both STATE and MTC may be retained by MTC until disposition has been made of any claim for damages and still pending and unresolved construction costs.

H. If any revenues or profits from any non-governmental use of PROJECT property are collected, those revenues or profits shall be used exclusively by STATE for the public transportation services for which the PROJECT was initially approved, either for capital improvements or maintenance and operational costs, otherwise MTC is entitled to a proportionate share equal to MTC's percentage participation in the PROJECT.

I. PROJECT personal property assets (PPA) purchased with RM2 funds, including related facilities and equipment, shall be used for the intended public transportation uses and should said PPA cease to be operated or maintained for their intended public transportation purposes for its useful life, MTC shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the PPA at the time those public transportation uses ceased, which sum shall be paid back to MTC in the same proportion that RM2 funds were originally used unless PPA or net receipts received from a sale of PPA are reallocated to other public transportation uses by STATE.

J. STATE shall post on both ends of the PROJECT construction site(s) at least two signs visible to the public stating that the PROJECT is funded with RM2 Toll Revenues.

K. STATE's District Director or designee is delegated the authority to make non-substantive changes or minor amendments to the Initial Project Report as he/she deems appropriate. Otherwise, Section III, Paragraph A applies.

L. STATE shall maintain full and adequate PROJECT books, records, and accounts in accordance with STATE's standard governmental accounting practices. All such books, records, accounts, and any and all work products, materials, and other data relevant to PROJECT performance under this Agreement shall be retained by STATE for a minimum of four (4) years following the fiscal year of the last STATE expenditure for construction costs made under this Agreement.

M. STATE shall permit MTC and its authorized representatives to have, during normal business hours, access to STATE's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Paragraph L above. Such permission shall extend to books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement of such parties, including third-party contractors, to which STATE has administration and contractual access. STATE shall not dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.

N. STATE shall comply with any and all laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of such government including but not limited to MTC that relate to or in any manner affect the performance of the Agreement.

## II. MTC AGREES

A. MTC agrees to provide STATE RM2 funds within the ceiling amounts specified per each PROJECT phase in MTC Resolution No. 3730 for a total amount not to exceed fifty million dollars (\$50,000,000) for the purpose of funding the PROJECT described in Attachment B. Said Resolution will be subject to being amended by MTC to adjust for PROJECT cash flow dictated by the bid process set forth in the contract awarded by STATE for PROJECT completion and all contract change orders reasonably required for said completion and the settlement of claims, up to the maximum amount specified in the previous sentence.

B. Subject to the terms of the previous paragraphs, MTC agrees to make payments to STATE on a monthly basis thirty (30) days after receipt by MTC of each acceptable estimate invoice, subject to the review and reasonable approval of MTC's Project Manager.

STATE shall deliver or mail invoices to MTC, as follows:

Accounting Department  
Metropolitan Transportation Commission  
Joseph P. Bort MetroCenter  
101 8<sup>th</sup> Street  
Oakland, CA 94607-4700

III. IT IS MUTUALLY AGREED

A. Any substantive material changes in the activities to be performed under this Agreement, excluding contract change orders initiated in the normal course of administering the competitively bid construction contract for PROJECT, shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the MTC Executive Director or a designated representative and the STATE Director, Department of Transportation, or a designated representative. No request for additional compensation or an extension of time shall be recognized unless contained in a duly executed amendment.

B. MTC may terminate this Agreement without cause upon sixty (60) days prior written notice. If MTC terminates this Agreement without cause, STATE will be entitled to payment for PROJECT costs already incurred, including PROJECT suspension and claims costs, up to the maximum amount payable under this Agreement. If STATE fails to perform as specified in this Agreement, MTC may terminate this Agreement for cause. Termination shall be effected by serving a sixty (60) day advance written notice of termination on STATE, setting forth the manner in which STATE is in default. If STATE does not cure the breach or describe to MTC's satisfaction a plan for curing the breach within the sixty (60) day period, MTC may terminate this Agreement for cause. In the event of such termination for cause, STATE will be entitled only to those costs incurred for already completed PROJECT work and claimed costs allowed by claims settlement and arbitration as between STATE and its contractors, not to exceed the maximum amount payable under this Agreement for such PROJECT work.

C. Except for invoices submitted by STATE pursuant to Section II, Paragraph B above, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered or mailed to such party at their respective addresses as follows:

To MTC:	Attention: Kenneth Kao, Project Manager
	Metropolitan Transportation Commission
	101 - 8th Street
	Oakland, CA 94607-4700

To STATE:                      Attention: Maximo Anasco Jr, Project Manager  
   Department of Transportation  
   111 Grand Ave  
   P.O. Box 23660  
   Oakland, CA 94623-0660

Upon completion, STATE will properly account for all PROJECT costs incurred.

D.        To the extent that there may be any conflict as between the terms of this Agreement and any of the referred Attachments hereto, STATE policies, STATE Administrative Manual, or P&P, this Agreement shall prevail. Specifically, the overhead rate cap of 50 percent specified in MTC Resolution No. 3636 shall be waived by MTC and shall be replaced with STATE's actual overhead rate set each fiscal year pursuant to standard State of California accounting practices (73.09% for 2006/07).

E.        It is understood and agreed that commencing on January 1, 2007, with the exception of those RM2 funds that may be required to fund the 11.47% match, Congestion Mitigation and Air Quality Improvement Program (CMAQ) Funds (available and allocated by CTC and FHWA as appropriate) may be substituted in lieu of RM2 funds to fund PROJECT costs. Any change of funding source will require an amendment to this Agreement.

F.        This Agreement shall terminate upon PROJECT completion (including the settlement of all claims) or on June 30, 2012, whichever is first in time.

The terms and conditions of this Agreement consist of the following and each is incorporated by reference herein as if fully set forth herein.

Attachment A – Allocation Resolution, MTC Resolution No. 3730

Attachment B – Updated Initial Project Report

Attachment C – MTC Resolution No. 3636

STATE OF CALIFORNIA  
Department of Transportation

METROPOLITAN TRANSPORTATION  
COMMISSION

WILL KEMPTON  
Director

By: \_\_\_\_\_  
Deputy District Director

By: \_\_\_\_\_  
Executive Director

Approved as to form and procedure:

Approved as to form:

\_\_\_\_\_  
Attorney  
Department of Transportation

\_\_\_\_\_  
Attorney

Certified as to budgeting of funds:

\_\_\_\_\_  
District Budget Manager

Certified as to financial terms and  
conditions:

\_\_\_\_\_  
Accounting Administrator